

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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C.M. et al.,	)	
	)	No. CV-19-05217-PHX-SRB
Plaintiff,	)	
	)	
vs.	)	Phoenix, Arizona
	)	June 18, 2020
United States of America,	)	10:32 a.m.
	)	
Defendants.	)	

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BEFORE: THE HONORABLE SUSAN R. BOLTON, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TELEPHONIC SCHEDULING CONFERENCE

Official Court Reporter:  
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Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared by Computer-Aided Transcription

P R O C E E D I N G S

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**P R O C E E D I N G S**

COURTROOM DEPUTY: Civil case 19-5217, C.M. and others versus United States of America. Time set for telephonic scheduling conference. Counsel, please announce your presence for the record.

MR. MACWILLIAMS: I'm sorry. This is Phil MacWilliams on behalf of Defendant United States.

MS. REITER: This is Diana Reiter from Arnold & Porter for plaintiff.

MR. FEINBERG: Your Honor, Jonathan Feinberg for plaintiffs.

MS. CONE-RODDY: Emma Cone-Roddy for plaintiffs.

MR. WALSH: This is Erik Walsh from Arnold & Porter for plaintiffs.

MR. FIDLER: Harry Fidler from Arnold & Porter for plaintiffs.

MS. REEDER: This is Emily Reeder from Arnold & Porter for plaintiffs.

THE COURT: Good morning. This is the time for our case management conference. I have reviewed the joint case management report and I want to discuss some items with you. We have quite a number of counsel on the phone for the plaintiffs. One of you will speak, not more than one of you in terms of answering any of my questions or discussing any of the

1 scheduling items. We don't have that problem on the defense  
2 side. Thank goodness there's only one of the two named counsel  
3 on the phone.

4 So who will be speaking on behalf of plaintiffs during  
5 this scheduling conference?

6 MR. FEINBERG: Your Honor, this is Jonathan Feinberg.  
7 I would be happy to address most issues. There are one or two  
8 when they come up when I ask the Court's permission to defer to  
9 Ms. Reiter.

10 THE COURT: Okay. That sounds fair. So the first  
11 thing that I wanted to ask is about initial disclosures. In  
12 the joint case management report, which was filed on 6-11, it  
13 indicated that the disclosure deadline was 6-12. So were  
14 disclosures made by both sides, Mr. Feinberg?

15 MR. FEINBERG: That's one issue for the plaintiffs,  
16 and I will defer to Ms. Reiter to cover.

17 THE COURT: No, it's a yes or no.

18 MR. FEINBERG: Oh, sorry, yes. The answer is yes.

19 THE COURT: Okay. I figured that that one didn't  
20 require a lot of discussion. So plaintiff has made disclosures  
21 as required by the Mandatory Initial Discovery Pilot project.

22 Mr. MacWilliams, did the Government make disclosures  
23 as well?

24 MR. MACWILLIAMS: Yes, Your Honor.

25 THE COURT: So may I mark this as already exchanged,

1 Mr. Feinberg?

2 MR. FEINBERG: Yes, Your Honor, with the caveat that  
3 we had some discussions about compliance with the Government.  
4 I would be happy to discuss those at a later time if you wish.

5 THE COURT: Yes, we're going to be talking about  
6 issues related to disclosure and discovery and what I can order  
7 today and what my anticipation is for the future on disclosure  
8 and discovery.

9 Next, I set a deadline for joining parties, amending  
10 pleadings, or filing supplemental pleadings, and I say that  
11 it's a deadline to do that. It's actually a deadline for  
12 filing a motion to do any of those things. This is a  
13 plaintiff's item. I can set a deadline for you, Mr. Feinberg.  
14 If you think there's a possibility that there may be any type  
15 of a motion to amend, or I can indicate that there will be no  
16 motions to amend filed. What is your preference?

17 MR. FEINBERG: Your Honor, I don't see any motion to  
18 amend. We can complete with these deadlines.

19 THE COURT: Okay. Perfect. So no motions. Okay.

20 The next item that I have on my order concerns the  
21 discovery limitations that are set out in the federal rules,  
22 and we're going to have some discussion about the number of  
23 depositions, but the one thing that everyone can agreed to is  
24 the depositions will be limited to seven hours of -- one day of  
25 seven hours as provided in the federal rules. I don't recall

1 that I saw any discussion about the numbers of interrogatories.  
2 Was the discussion, Mr. Feinberg, an agreement that 25  
3 interrogatories is enough? I have it, by the way, as each  
4 side, not each party, and I know that's another distinction  
5 that's being made with respect to depositions.

6 MR. FEINBERG: Your Honor, at this point I think that  
7 is enough. We may need to go back with the discussion about  
8 the responses to the Mandatory Initial Discovery, and I want to  
9 say in direct response to your question, which was not a topic  
10 of discussion, and I certainly don't want to speak for the  
11 Government on this, but I believe that we would be in agreement  
12 due to the tenor of our previous conversations that 25 will be  
13 sufficient.

14 THE COURT: Do you agree, Mr. MacWilliams, that we can  
15 stick with no more than 25 interrogatories per side?

16 MR. MACWILLIAMS: Yes, Your Honor.

17 THE COURT: Okay. Now, I agree that this is a case  
18 where the limitation on the number of depositions is likely  
19 insufficient. I also have a practice of limiting the number of  
20 individual requests for production of documents that can be  
21 propounded by either side. And let me be clear about what that  
22 means. You could send one Request for Production of Documents  
23 that had 25 categories in it, or you could send 25 requests for  
24 production of documents that only requested one category of  
25 documents or some combination thereof. So when I say I am

1 limiting the number of Request for Production of Documents, I  
2 don't mean that you can send out multiple requests containing  
3 many, many categories of documents that -- the categories of  
4 documents can only add up to 25.

5 I don't know if that's sufficient in this case.  
6 What's really addressed here are depositions. I believe that  
7 at this moment in time, without a significant disclosure, I'm  
8 assuming, without a significant disclosure of documents where a  
9 response to requests for production of documents, that trying  
10 to come up with a specific number of depositions is premature.  
11 What I think needs to be done in this case is that the parties  
12 actually attempt to jointly develop a discovery plan.

13 And for example, there's a suggestion that the  
14 plaintiff, each plaintiff needs to depose several government  
15 employees about the same things. I don't know at this point in  
16 time, and I don't know if the plaintiff even knows at this  
17 point in time, if some of those government employees that have  
18 information about individual plaintiffs or individual minor  
19 children and what actually happened are the same people, and I  
20 don't know if the person who arrested or detained one of our  
21 plaintiffs might also have been the same person that detained  
22 one of our other plaintiffs. I don't know that the five  
23 children were all in different places. I have just a very  
24 vague recollection that some of them might have been in the  
25 same place and, therefore, it might be the same person that has

1 information about more than one of the minor children, and so I  
2 think that rather than saying: Yes, indeed, plaintiff, you get  
3 40 depositions and defendant you get the same number, that this  
4 case should proceed with, which is not an unusual way to  
5 proceed, it should proceed with document discovery and  
6 disclosure of witnesses who, in accordance with the  
7 requirements of both Rule 26 and the MIDP, that will give you  
8 the names and the information that those witnesses have, at  
9 least a summary of the information they have that's relevant to  
10 the case, and that would then follow with depositions.

11 Does that seem like a reasonable way that this case  
12 would proceed, Mr. Feinberg?

13 MR. FEINBERG: Yes, Judge, and if I could just ask one  
14 question, I assume that from Your Honor's description that you  
15 would issue an order requiring some additional reporting by the  
16 parties to the Court after meeting and conferring?

17 THE COURT: Exactly. That you would meet and confer  
18 and hopefully agree on, well, hopefully on everything, but  
19 that's probably not likely, but we would come down to just the  
20 areas of disagreement in your discovery plan.

21 You know, as an example, you know, the Government  
22 says, and I probably agree on first blush the Government says:  
23 Gee, if you want to depose any current or former cabinet-level  
24 government officials, advisors to the President or the  
25 President, there should be certain requirements that are



1 different than simply noticing a deposition. You know, I agree  
2 about that, but I have no idea, and I'm not even sure that at  
3 this moment plaintiff's counsel has any idea whether you would  
4 seek to discovery from some of the people that fall into those  
5 categories because if you haven't seen the documents yet, you  
6 don't know who the authors are of the documents or who  
7 implemented the policy or who gave the direction for the  
8 policy.

9           So, you know, that's kind of why I think that document  
10 discovery is important to proceed, and whatever you can't agree  
11 on after you can make a case for why you need the additional  
12 discovery, whether it's document discovery that the Government  
13 is withholding on the basis of some claimed privilege or  
14 whether it's deposition discovery that's based on the need, a  
15 numerical limit that the Government thinks isn't justified by  
16 the needs of the case, or it's based on the specific identity  
17 of a member of the, a high-ranking member of the executive  
18 branch of Government, I think that's the point where I would  
19 step in and try to resolve, not try to, I would resolve it, but  
20 I think right today it just doesn't make any sense for me other  
21 than to tell you, yes, indeed, this is a case where the  
22 limitations on discovery are insufficient and where my  
23 suggestion of 25 requests for production of documents may be  
24 insufficient. It doesn't really take us to where we need to go  
25 in this case, and I would expect there to be significant

1 cooperation between plaintiff's counsel and the Government's  
2 counsel to try to reach some reasonable agreement on a  
3 discovery plan.

4 So maybe this is the moment, Mr. Feinberg, when you  
5 can tell me why you think the Government's disclosures were  
6 just deficient?

7 MR. FEINBERG: Thank you, Your Honor. And first, I  
8 appreciate to give an explanation. With regard to the  
9 disclosure, on that issue with Your Honor's permission I'd like  
10 to defer to Ms. Reiter.

11 THE COURT: Go ahead.

12 MS. REITER: This is Diana Reiter. We have concerns  
13 about the Government's MIDP responses which we've shared with  
14 the Government in a letter and during a meet and confer. For  
15 example, the Government has identified only eight government  
16 officials or believed to have discoverable information. The  
17 Government did advise us today that it will supplement its  
18 responses on June 29th following the meet and confer and letter  
19 that we sent to them, and so we hope to avoid having to raise  
20 these issues with the Court and plan to review the Government's  
21 supplement at the end of the month and make every effort to  
22 resolve our issues, but as I noted, we believe that the  
23 responses are insufficient and I am happy to answer any  
24 questions Your Honor has.

25 THE COURT: So Mr. MacWilliams, are you also

1 representing the Government in the other case that I've  
2 transferred in?

3 MR. MACWILLIAMS: Yes, Your Honor, the APS case.

4 THE COURT: Yes. So I can understand given the  
5 bureaucracy of the Federal government that it might be, it  
6 might take more time than it might in a regular civil case to  
7 come up with the required MIDP information, but, and I'm not  
8 prejudging 'cause I haven't read the current Motion to Dismiss  
9 except to note large parts of it that are identical to the  
10 Motion to Dismiss that I already ruled on in this case. It  
11 seems to me that the Government is going to have to make a  
12 rather monumental effort to gather information that's going to  
13 be the same information to a great extent for both cases, and  
14 that I would expect that that effort would be significantly  
15 underway.

16 As it relates to the specific things that happened to  
17 these five plaintiffs and their minor children; that is, you  
18 know, who on -- who in the, at the Arizona Border Patrol office  
19 made a decision, you know, who knows about where each, you  
20 know, why things happened to these plaintiffs. They may not be  
21 individual to the case, but the case, you know, we know from  
22 what the Government is telling us that it wasn't the border  
23 patrol in Arizona that just decided to do this; that it was  
24 done pursuant to a policy or a directive of people above them,  
25 above the border patrol office in Arizona, and the Government

1 should be making a sincere effort to identify who those people  
2 are and to disclose that information.

3 I mean, from what Ms. Reiter said, did you really only  
4 disclose eight witnesses?

5 MR. MACWILLIAMS: Not quite, Your Honor, and I'll  
6 first start off by saying that the way you're sort of  
7 describing the case is exactly how we see it. I mean, you  
8 know, when you talk about the universe of potential relevant  
9 documents, we put them into two categories, like you said,  
10 yeah, just these plaintiffs and their experience at the border  
11 and then, you know, subsequently while they were in detention  
12 and the kids were in OR custody, and, you know, yeah, we made  
13 significant effort in identifying those documents and getting  
14 them ready for production.

15 And then to Your Honor's point you have sort of the  
16 bigger picture policy-type document, and you're right, this  
17 kind of ties into the difficulties of this case and we are  
18 trying as best we can be able to get that discovery done once  
19 so that it applies to all the cases that may be coming through,  
20 this one, the APS, and potentially others. So I agree that is  
21 what we are trying to do.

22 As far as the eight disclosures or the names, so that  
23 doesn't include -- those are strictly at the high-level policy  
24 side of things. The more individual type of individual claims  
25 of the plaintiffs, you know, at the border and the OR custody,

1 we're definitely going to supplement those. We alerted  
2 plaintiffs to the documents they were in, but they asked us to  
3 disclose them and we agreed to do it, so that's on its way.

4         You know, on the policy side of things, I do  
5 anticipate adding to that supplemental list as discovery goes  
6 on and as our inquiries go on, but, you know, this case is  
7 about the policies made at the highest levels of government.  
8 It wasn't the border patrol agent who made the decision; it  
9 wasn't anything at the regional level. The allegations are it  
10 was a high-level decision, and that's who we have been focusing  
11 on, and that's who we disclosed. That's not to say that that's  
12 the next layer down of, you know, chief of staff and deputies  
13 won't be added to the list. We will if they were involved in  
14 these discussions and of policy formulations, but adding to the  
15 problem it is -- government bureaucracy, of course, plays in,  
16 but a lot of these people are gone, and you know, to really get  
17 to the heart of the matter and figure out whose role is what,  
18 if any, it involves ESI, and we are in discussions with  
19 plaintiffs about that, custodians and things like that, and  
20 once we're able to make agreements on that and get those  
21 searches done, I think then we will really be on our way and we  
22 will be able to start producing but, there might be privilege  
23 issues, of course, but then we will be able to start producing  
24 not only documents to the Government but from my point of view  
25 learning much more about the case where I can make those sort

1 of disclosures that plaintiffs are expecting.

2 THE COURT: But I heard what you said, and one of the  
3 things that I want to remind you of is that there are claims  
4 for damages here. Not just -- it's not just the high-level  
5 policy. It's not just why its happened. It's the claim for  
6 personal injury damages that both the mothers and the minor  
7 children have alleged, and those things are very localized to  
8 the facilities where they were held, both the mothers and the  
9 minor children, and I think that it's imperative that the  
10 Government make sure that you immediately, if not sooner, find  
11 out who those individual people are because those are people  
12 who could easily, you know, if it's one of these contract  
13 children's place, I will call it places, I don't want to use  
14 anything pejorative, you know, they probably have a high  
15 turnover of employees, and I don't want to be down the road,  
16 you know, a year from now and you say, well, we know they were  
17 at this contract location, but that employee, we can't figure  
18 out who, we don't know who the people were anymore who did the  
19 things that the plaintiffs claim caused the emotional distress.

20 So I think that, you know, the idea that today the  
21 only names that you have disclosed are names of policymakers or  
22 people that implemented policies, and I am sure that these are  
23 important things to both sides in this case, but from my  
24 perspective the case involves a claim under the Federal Tort  
25 Claims Act for damages and finding out who the people are that

1 have personal knowledge about the circumstances of the mothers  
2 and the children during the time that they are separated is to  
3 me very important. Now, I don't know if the bigger issues in  
4 this case that don't involve these specific people are all that  
5 important to the plaintiff's counsel. I understand from the  
6 Government's perspective you have this case, you have the other  
7 case, I don't even know if there is cases from other  
8 jurisdictions, and they all do relate to these bigger issues of  
9 policy, but I don't want to forget that we're actually talking  
10 about a Federal Tort Claims Act claim for damages for ten  
11 people, and that, and I think you have to focus efforts on  
12 that, that the documents that are in Washington D.C. or  
13 wherever these policies remain, they are not disappearing any  
14 time soon. They will still be there. Any claims that you have  
15 for privilege, they will still be there. The high-level  
16 people, their names will already -- always be known because  
17 they are going to be on these documents, but it's the local  
18 people, whether it's the local people at the border patrol,  
19 whether it's the local people at the adult detention center or  
20 whether it's local people at the facility where the children  
21 were during the period of separation, I think the government  
22 needs to focus on that immediately so that that information is  
23 available and isn't hard to find in the future or people hard  
24 to find in the future.

25 So Mr. MacWilliams.

1 MR. MACWILLIAMS: Yes, Your Honor, and I do agree with  
2 what you're saying. When I first started speaking I maybe  
3 glossed over it too much cause I was trying to get to the  
4 policy side of things quickly, but I agree with what you're  
5 saying, and I want to make sure you understand that these, what  
6 you're referring as the local documents dealing with these  
7 particular plaintiffs, yes, that's part of the case. We have  
8 identified them. We have gathered them. They are being  
9 prepared for production. And to your point and to counsel's  
10 earlier points about supplementing, those are the names I was  
11 referring to is we were going to supplement our disclosures.  
12 Instead of just waiting until we get the documents, we are  
13 going to actually go through that and provide the names as part  
14 of our supplement, so I agree with what you're saying and  
15 that's what we're doing.

16 THE COURT: And when are you going to supplement?

17 MR. MACWILLIAMS: Okay. I told the plaintiffs by  
18 Monday June 29th. The reason being is I'm lead counsel on the  
19 case and I am going to be out of the office next week. That's  
20 why I was hoping for a few extra, about a week or so, and I  
21 hope that's okay. I haven't heard back from plaintiffs yet,  
22 but I hope that's okay with them.

23 THE COURT: Well, that sounds really reasonable to me.  
24 So I'm going to show the Mandatory Initial Discovery Pilot  
25 project disclosures are already exchanged. The defendant will



1 be filing a supplementing disclosure no later than Monday  
2 June 29th.

3 On the discovery limitations, I am going to indicate  
4 the one day, seven hours for depositions and the limitations on  
5 25 interrogatories including subparts, but I'm going to order  
6 that the parties prepare a discovery plan that discusses the  
7 numbers of requests for production of documents and not the  
8 number, but a specific plan. Maybe not identifying the names  
9 at this point, but a description of the people who need to be  
10 deposed. Some may be names. Some may be, you know, the person  
11 who provided something to these children at the place where  
12 they were living during the separation period. And then to  
13 identify in that plan areas of disagreement so that then we  
14 could have a conference about only the things that you're in  
15 disagreement on as opposed to today trying to pick a number  
16 that we know is greater than ten, but may be well short of 40.

17 So let me ask -- oh, here's something else that I  
18 highlighted. The idea that we're going to have motion practice  
19 concerning protective order, can somebody elaborate on what  
20 that's going to be about?

21 MS. REITER: Yes, Your Honor. This is Diana Reiter.  
22 Again, if I may.

23 THE COURT: Go ahead.

24 MS. REITER: Me and the Government have been working  
25 in good faith to reach an agreement on a protective order and

1 we made quite good progress over the last couple of weeks.  
2 There is one sticking point which may ultimately have to raise  
3 with the Court, I am happy to outline if Your Honor would like,  
4 but we are still doing our best to work out, and we have not  
5 completed our discussions with the Government. Before raising  
6 it with Your Honor, we want to take one more run on trying to  
7 reach agreement on the issue.

8 THE COURT: Okay. I don't want to know what the area  
9 of disagreement is. I just want to say that in the past  
10 20 years I have never had to have motion practice concerning a  
11 protective orders entry. We might have had motion practice  
12 concerning whether a particular document that was produced in a  
13 different -- in a category was over, was more confidential than  
14 it really should have been, but in terms of reaching the  
15 protective order, I've signed hundreds of them and they've all  
16 been on a stipulation. So I anticipate that it should be  
17 something that you and the Government can agree on.

18 I understand that you're still in negotiations on ESI  
19 and I would expect that negotiation and that agreement on the  
20 form of production of electronically-stored information would  
21 be included within your discovery plan.

22 MS. REITER: Yes, Your Honor. This is Diana Reiter.  
23 We have reached an agreement in principle on the ESI protocol  
24 and we don't anticipate any issues and we will include that in  
25 our discovery plan.

1 THE COURT: There's an indication here that the  
2 parties agree that an order pursuant to Rule 502 of the Rules  
3 of Evidence should be entered. I don't need an update. Again,  
4 if you have an agreement, that should be submitted with a  
5 stipulation and proposed order.

6 MR. MACWILLIAMS: Understood, Your Honor.

7 THE COURT: I think that even in the absence of a  
8 discovery plan that I should go forward and set the deadlines  
9 for the close of discovery expert disclosure and alike 'cause I  
10 don't want to leave this open-ended with you. I want you to  
11 know that you've got these deadlines that are out there. I  
12 mean, they are generous deadlines. One of them, the fact  
13 discovery is a year away and the expert disclosures are more  
14 than a year away, but I think that we should go ahead and have  
15 those here so that the idea is that you'll come up with this  
16 discovery plan and that will include new and extended deadlines  
17 for these items.

18 So I am going to order that the close of discovery and  
19 the final supplementation of MIDP responses for June 11th. I  
20 wanted to ask you a question about the way that you phrased the  
21 expert disclosures as affirmative rebuttal and supplemental.  
22 Is this a case where the defense would have affirmative expert  
23 disclosures, Mr. MacWilliams?

24 MR. MACWILLIAMS: Your Honor, I can't answer that for  
25 sure, but it's certainly possible. If it does, it's relating

1 to damages, you know.

2 THE COURT: Wouldn't they be responsive?

3 MR. MACWILLIAMS: I think it's probably more likely,  
4 but I just don't want to rule out the possibility of having  
5 experts, affirmative experts.

6 THE COURT: I'm not ruling out the possibility. I'm  
7 just going to change it to plaintiff, defendant and rebuttal  
8 because that doesn't preclude an affirmative one. Usually we  
9 do the affirmative and responses in a situation where it's  
10 known that the defendant has a burden of going forward that  
11 might require expert testimony. So this doesn't preclude  
12 affirmative testimony because then the plaintiff has rebuttal.  
13 So I'm going to say that plaintiffs must provide expert  
14 disclosure by August 13th, the defendants by September 24th,  
15 and rebuttal disclosures, if any, by October 22nd of 2021 with  
16 expert depositions completed by December 23, 2021.

17 The parties have agreed that you will have good faith  
18 settlement talks no later than June 21st -- I'm sorry -- 12,  
19 2021. The deadline for dispositive motions January 29, 20 --  
20 oh, my gosh -- 22. And this is a Federal Tort Claims Act case  
21 which means that it is not a case that can be tried to the  
22 jury. It will be a bench trial. In light of that, I am not  
23 going to follow my usual practice, which is to set a firm trial  
24 date because with a bench trial, as soon as dispositive motions  
25 are resolved, I could quickly confer with counsel and set a

1 trial date based on all of our calendars. So I'm going to stop  
2 my order at the dispositive motion deadline for this case  
3 rather than attempt to set a firm trial date.

4 What else, if anything, Mr. Feinberg, did you want to  
5 raise with the Court today?

6 MR. FEINBERG: Your Honor, the only issue at issue,  
7 Your Honor, to issue an order requiring submission of a  
8 discovery plan --

9 THE REPORTER: I can't hear.

10 MR. FEINBERG: -- issue an order requiring submission  
11 of a discovery plan. Will there be a deadline for that  
12 submission at some point early in the discovery period?

13 THE COURT: Yes. Yes. I want to give you a deadline,  
14 but I want to consult with you on it. What would you think is  
15 reasonable, 45, 45 days?

16 MR. FEINBERG: I think that in order to have a true  
17 evaluation of the necessary document requests and depositions,  
18 we will need to see the Government's ESI --

19 THE REPORTER: Need to see?

20 THE COURT: I'm sorry, I have to interrupt you.  
21 You're voice is getting garbled. It's the telephone, not you,  
22 and the court reporter is having a hard time understanding you.  
23 Did you say that you have to first see the Government's ESI?

24 MR. FEINBERG: Yes, that's what I said, Your Honor, in  
25 order to have a better feel for the number of depositions that

1 we would need to be taken, and the topic areas to cover, I  
2 think it will be necessary for us to have a better  
3 understanding of scope of information that will be produced.

4 THE COURT: Did you get any ESI with your -- with the  
5 Government's June 12th disclosures?

6 MR. FEINBERG: No, we did not.

7 THE COURT: You got no documents at all?

8 MR. FEINBERG: That's correct.

9 THE COURT: Oh, Mr. MacWilliams, is your supplement  
10 for next week going to have documents?

11 MR. MACWILLIAMS: Well, yes, Your Honor, I want to,  
12 again, get back to the two categories of documents here. We  
13 have documents -- we disclosed the documents, a lot of these  
14 the plaintiffs already have, but correct me if I am wrong here,  
15 but my understanding as far as, we are disclosing ESI on our  
16 disclosures, I believe there is a 30-day period in which to  
17 produce it, and the vast majority of what we disclosed is ESI,  
18 so that, you know, that's why we are where we are as far as the  
19 document production.

20 THE COURT: So when do you expect to disclose  
21 documents?

22 MR. MACWILLIAMS: Well, our plan was to make our  
23 production no later than July 12th.

24 THE COURT: Well, then why don't I set a 60-day  
25 deadline for the discovery plan. Does that sound reasonable to

1 you, Mr. Feinberg, or is that too long?

2 MR. FEINBERG: No, that's acceptable, Your Honor.

3 THE COURT: Okay. Mr. MacWilliams, is that reasonable  
4 for you?

5 MR. MACWILLIAMS: Yes, Your Honor.

6 THE COURT: Okay. And I expect the discovery plan to  
7 have an agreement on Request for Production of Documents and an  
8 agreement as far as it can go on who is going to be deposed  
9 either by name or description. Okay.

10 Mr. MacWilliams, did you have anything else that you  
11 wanted to raise?

12 MR. MACWILLIAMS: No, Your Honor.

13 THE COURT: Okay. I'll try to come up with an order  
14 that incorporates the things that we have discussed today as  
15 well as the deadlines that we've set in accordance with your  
16 agreements.

17 Thank you all very much.

18 MS. REITER: Thank you.

19 MR. FEINBERG: Thank you.

20 MR. MACWILLIAMS: Thank you.

C E R T I F I C A T E

I, HILDA E. LOPEZ, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 8th day of July, 2020.

s/Hilda E. Lopez  
HILDA E. LOPEZ, RMR, FCRR